TEIJEIRO Y BALLONE, ABOGADOS

TRANSACTIONAL TAX NETWORK CONFERENCE

RECENT DEVELOPMENTS ON SECURITIES RELATED TAXATION IN ARGENTINA: DIVIDEND TAXATION.

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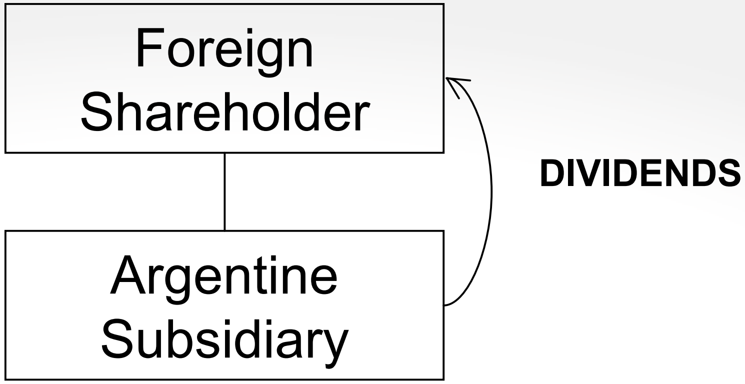
RECENT TRENDS ON DIVIDENDS TAXATION

➢ As anticipated, Argentina has left behind its longstanding tradition on dividend taxation under which profits already taxed at the corporate level were not subject to further taxation upon distribution.

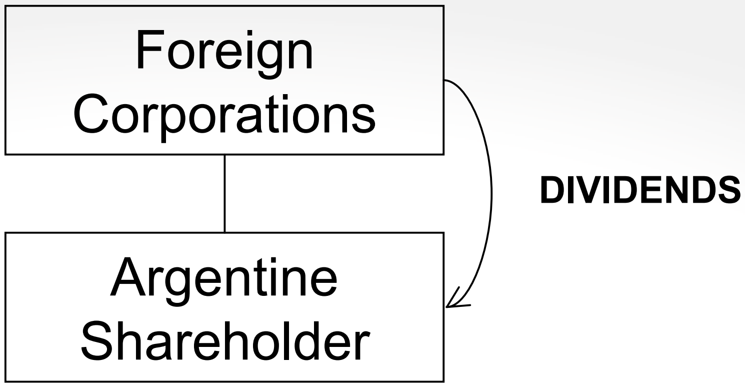
- Law 26,893 (Official Gazette, 9.23.13)
- Decree 2,334 (Official Gazette, 7.2.14)
- Resolution 3,674 (Official Gazette 9.10.14)

ARGENTINE SOURCE DIVIDENDS: BEFORE SEPTEMBER 2013



- Dividends distributed by an Argentine subsidiary to its foreign shareholders were generally nontaxable.
- Only distributions of untaxed corporate earnings and profits were subject to a 35% withholding tax (*i.e.*, the equalization tax), assessed on the excess of accounting profits and withheld by the distributing company upon distribution.
- Same treatment applied on distributions to Argentine resident shareholders.

FOREING SOURCE DIVIDENDS: BEFORE SEPTEMBER 2013



- Dividends distributed by a foreign corporation to its Argentine shareholders were subject to tax at the regular income tax rates.
- Direct and indirect tax credit was available.
- Foreign source dividends integrated by dividends distributed by Argentine entities were excluded.

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ARGENTINE SOURCE DIVIDENDS: CURRENT LAW

- Dividends distributed by Argentine entities (i.e., corporations, limited liability companies, non-transparent trusts, investment funds) are subject to withholding at a 10% tax rate.
- Same rule applies on remittances of profits by local branches.
- This withholding applies in addition to the equalization tax.
- Dividends or profits are deemed paid for purposes of the application of the withholding tax and the equalization tax when actually paid or constructively received.
- If the withholding is not possible (e.g., in-kind distributions), the Argentine distributing entity must pay the tax regardless of the right to claim the reimbursement to the relevant shareholder.

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FOREIGN SOURCE DIVIDENDS: CURRENT LAW

- No relevant changes.
- Dividends distributed by a foreign corporation to its Argentine shareholders are still subject to tax at the regular income tax rates.
- Direct and indirect tax credit still available.
- Foreign source dividends integrated by profits distributed Argentine entities are excluded to the extent these profits were subject to (i) equalization tax (if applicable) and (ii) the 10% withholding tax.

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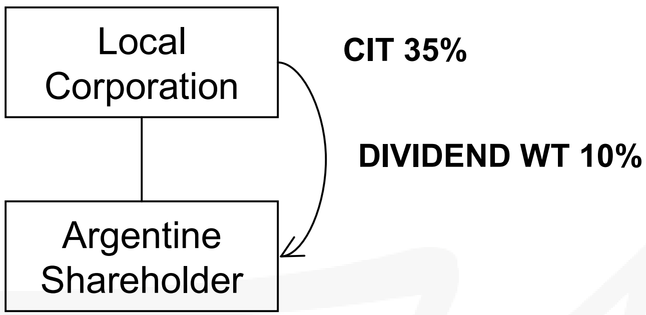
ARGENTINE TREATY LAW

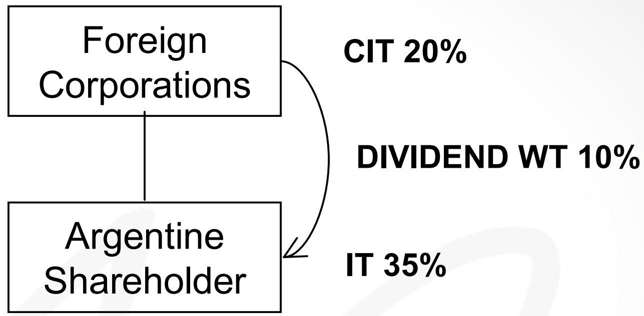
- As a general rule, Argentine treaties follow the OECD Model
- Taxation shared by the residence and the source country.
- Maximum tax rates at the source country and the applicable conditions vary (following the UN Model).
  - **10%** of the gross amount of the dividends if the beneficial owner is a company which
    - Holds directly [or indirectly] at least [no less] **25%** of the capital
    - Controls, directly or indirectly, at least **25%** of the voting power]

    in the company paying the dividends;
  - **15%** of the gross amount of the dividends in all other cases.
- Usual dividend definition as well as paragraphs 4 and 5 of Article 10 of the OECD Model.

ISSUES RELATED TO DIVIDEND TAXATION: NEUTRALITY?

- Indirect tax credit available when dividends are distributed by foreign entities, while this credit is not available with regard to dividends distributed by domestic corporations.





Profits	**$100**
CIT	**$35**
Dividend	**$65**
Div Tax	**$6.5**
Dist	**$58.5**

Effective rate 41,5%

Foreign country	
Profits	**$100**
CIT	**$20**
Dividend	**$80**
Div Tax	**$8**
Dist	**$72**

Argentina	
Div grossed up	**$100**
Income tax	**$35**
Credit	**$28**
Tax payable Arg	**$7**

Effective rate 35%

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ISSUES RELATED TO DIVIDEND TAXATION: TREATY THRESHOLDS

- Argentine treaties provide a maximum tax rate of 10% and 15% of **the gross amount** of the dividends.
- Considering the two Argentine taxes applicable on the distribution of dividends (i.e., 35% equalization tax on the excess of accounting over taxable income plus 10% withholding tax), it is discussed how the ceiling has to be assessed and applied. Possible constructions:
  - In order to determine the applicable rate (capped by the treaty), the distributing company will need to analyze whether the 35% equalization tax on the excess of accounting over taxable profits plus the 10% general withholding plus is higher than 15% of the gross dividend amount.
  - The two applicable rates (10% and 35%) have to be capped by the treaty ceiling rate separately.
  - The ceiling does not apply to the equalization tax (i.e., Swiss treaty).

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ISSUES RELATED TO DIVIDEND TAXATION: REMITTANCE OF PROFITS BY LOCAL PEs

- Remittance of profits by local PEs are also subject to withholding tax
- How this tax is treated in the Argentine treaty network:
  - Non-discrimination on PEs, Article 24(2) “*The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities*”.
  - This clause would preclude the application of an additional tax on the remittance of profits by a local PE.
  - Some treaties provide the following statement: non provision in this treaty shall “*prevent a Contracting State from imposing on the profits or income attributable to a permanent establishment in that Contracting State of a company which is a resident of the first--mentioned Contracting State an additional tax. However, that additional tax shall not exceed 10 per cent. of the profits or income of the permanent establishment after deduction of the income tax payable thereon.*”
  - It is discussed that treaties not providing such a statement allow the application of a withholding tax on the remittance of profits by local PEs

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ISSUES RELATED TO DIVIDEND TAXATION: TRANSPARENT ENTITIES

- Transparent entities (e.g., partnerships, limited partnerships) are not affected by the recent trends on dividend taxation.
- Income obtained by these entities flows-through to the partners subject to tax only once.
- In the case of foreign partners, the applicable withholding tax rate is 35%

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Thank You

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